

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
SUPPLEMENTAL
BRIEF**

75-7554 ORIGINAL

75 - 7554

JAN 15 1976

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

HARRY JACOBSON

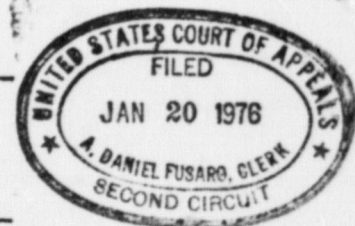
Appellant

vs.

CASPER WEINBERGER, Secretary Health,
Education & Welfare,

Appellee

Reply
SUPPLEMENTARY BRIEF FOR APPELLANT



HARRY JACOBSON, Pro Se

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New York, New York
10012

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HARRY JACOBSON,

Appellant

-v-

CASPER WEINBERGER, Secretary of
Health, Education and Welfare,

Appellee

Docket No. 75-7554

(SUPPLEMENTAL BRIEF)

NOTICE TO ADMIT

AFFIDAVIT

SIRS:

PLEASE TAKE NOTICE that I, HARRY JACOBSON, Appellant
in the above titled matter, pursuant to Rule 30 Federal
Rules of Appellate Procedure, beg leave for the Court to
consider my affidavit annexed as a supplement to my brief,
for the purpose of establishing indisputable facts and law
to facts which appellee has failed to admit.

Yours etc.

DATED: New York New York
January 1976

HARRY JACOBSON
Appellant Pro Se

TO: THOMAS J. CAHILL ESQ.
United States Attorney
for the
Southern District of New York,
Attorney for The United States
of America

THOMAS H. BELOTE ESQ.
Special Assistant United States Attorney
Of Counsel

STATE OF NEW YORK
COUNTY OF NEW YORK }

ss:

Harry Jacobson being duly

sworn, deposes and says:

The appellee shows an improper prosecution and uncorrelated to the following substance effect and facts.

He has constructed a show cause from his transcript records and pages 19,20,21,22,23 24.

The documents referred to bear pertinent dates as follows.

1. October 25, 1965 on page 23
2. November 1, 1965 on page 21
3. Oct '64 on page 22
4. Dec '65 on page 22
5. July 14, 1966 on page 44
6. 11/64 on page 44 (twice)
7. \$1600 in 1964 on page 44
8. \$1853 in 1965 on page 44
9. 1966 on page 44

October 25, 1965 appearing on page 23 is the date I signed a formal application for retirement insurance benefits and Medicare as indicated on page 19 thereof.

On page 22, question number 19 reads "This application for retirement benefits may be retroactive for as many as 12 months from the date it is filed but not for any month before you reached age 62. If you are between age 62 and age 66, your application may be for benefits payable at a reduced rate. They will continue at a reduced rate even after you reach age 65. If there are any months before you reach age 65 for which you do not wish to claim benefits, enter the months and give reason ----" (the service representative made the entry Oct 64 - Dec 65 Employed)

Important facts indicated in the application:

- (a) date of birth (page 19) 1/23/01
- (b) were you self employed this year, last year, or the year before? Answer yes page 20
- (c) "I render substantial services in self employment" pages 21 and 22
- (d) "Enrollment in Supplementary Medical Insurance Benefits Plan", notably "enrollment periods" and the advert "A request for enrollment cannot be effective unless it is made within one of the enrollment periods specified in the law. If you do not enroll within your initial enrollment period, you may have to pay a higher premium for the medical insurance protection and your coverage will not begin until 6 to 9 months after you enroll."

MEDUCARE WAS AN ATTRACTIVE INDUCEMENT TO SIGN AN APPLICATION WHETHER OR NOT INFORMATIVE OF RISK OF SACRIFICING BENEFITS.

For purposes of admission it is shown how above mentioned dates are correlated to the following laws in the sense how appellee's show cause was misconstrued.

Section 202(a)(1)(2)(3)

Section 202(j)(1)(2)(3)

Section 202(q)(1)(6)(7)(8)(9)

A date of birth of 1/23/01 fitted to Section 202(a)(3) which reads "has filed application for old age insurance benefits --- for the month preceding the month in which he attained the age 65." This identifies Dec 65, numbers 4 and 8 above. Section 202(j)(1) paraphrased means that an application made anytime before such a month as that in which an individual is entitled to a benefit under section 202(a) as distinguished from a month which is recognized as a month in which an individual elects to become entitled to a benefit

under section 202(a) and if it is the month which is before the month preceding the month in which he attained the age of 65, such month as he elects to start his entitlement to a benefit becomes the start of the reduction period indicated in section 202(q)(6)(A) and ends with the last day of the month before the month in which such individual attains retirement age 65 indicated in section 202(q)(6)(B) and section 202(q)(9) indicates that for the purposes of section 202(q) the term "retirement age" means age 65 with respect to old age, wife's or husband's insurance benefit and age 62 with respect to a widow's insurance benefit, and section 202(q)(7)(A) excludes any month from the reduction period prescribed by section 202(q)(6) mentioned above for reasons of deductions under section 203(b) and section section 202(q)(8) indicates 202(q)(1)(A)(B) shall be applied after reduction under section 203(a) and after application of 215(g).

The Secretary's transcript record page 45 alleges that I received benefits for November and December of 1964 and not for January 1965 through April 1965, and for May 1965 through December 1965 and that "no benefits were payable to you for January 1965 through April 1965 " an indication of section 203(b) and section 202(q)(7).

The above allegation that I received benefits in November 1964 and December 1964 is not consonant with the fact of the matter, the fact that my application was not found to be for any month

Affidavit

4.

other than the month specified in section 202(a)(3) namely December 1965.

The allegation that I was paid a benefit for November 1964 means that the Secretary constructed the premise that I elected the month of October 1964. This would mean that he applied section 202(a)(1)(2)(3).

It also means the allegation that the Secretary deemed that October 1964 was the month in which I filed my application for old age benefits such month being any month after August 1950, as per section 202(j)(1).

These allegations were constructed in the handwriting of my interrogator as indicated in the application page 23, question number 19 as follows: " If there are any months before you reach age 65 for which you do not wish to claim benefits, enter the months and give reason" and the interrogator wrote in "Oct 64 - Dec 65 Employed"

However, concealment of the protective clause of section 202(j)(3) negates the allegation because the clause makes the election of October 1964 benefit when waived, a zero benefit. An astonishing concealment of fact and law to fact, in view of the Secretary's allegation that he paid me an October 1964 benefit amount of money.

Obviously December 1965 is the first month for which I am entitled to a benefit for old age per section 202(a)(3) and not 202(a)(2). The fact of the matter is that December 1965 is the month before my age 65 in January 1966.

Affidavit

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It came about that the official application was signed by me on October 25, 1965 because P.L. 89-97 (MEDICARE) its Sections 1836, 1837, 1838 made consonant an application filed on October 25, 1965 with such a month as is the month before January 1966 in the following language of Section 1837(d):

" In the case of an individual who first satisfies paragraphs (1) and (2) of Section 1836 on or after January 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later" and consonant with "Section 1836 Every individual who-

- "(1) has attained the age 65, and
- "(2)(A) is a resident of the United States----- or
- (B) is entitled to hospital insurance benefits under part A, is eligible to enroll in the insurance program established by this part."

Date of filing of application October 25, 1965 satisfies Section 1837(d) medicare enrollment starting date indicated of January 1, 1966 which is consonant with such a month of December 1965 which satisfies Section 202(a)(3) as the first such month for which I am entitled to a benefit for age 65. This construction of law produced the adverts made in the official application form on transcript record page 22 23 respecting enrollment requirements in medicare. The above facts were distorted by the authorities and they exacted Section 202(q).

Section 202(q) is titled "Reduction of Old Age, Disability,

Wife's, Husband's, or Widow's Insurance Benefit Amounts "

Pursuant to Section 202(q)(6)(A) my reduction period would start December 1, 1965, and (B) ends December 31, 1965, which is one month and not 14 months as alleged.

Pursuant to Section 202~~(q)~~ (a)(3) such a month as December 1965 which is a month after August 1950 and is a month ~~before~~ preceding the month in which age 65 is attained is not subject to the inclusion of Section 202(q).

The incursion of a reduction period of 14 months is the chief defense for the appellee. Appellee made this his issue.

I have received notice from the clerk of this Court, notice of submission on February 3, 1976, annexed a returnable questionnaire respecting oral argument.

It seems to me that such a matter is not a subject for oral argument nor any other.

Section 202(j)(2) provides judicial review. It reads:

"(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application. If upon final decision by the Secretary, or decision upon judicial review thereof, such application is found to satisfy such requirements, the application shall be deemed to have been filed in such first month. "

Affidavit

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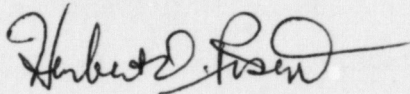
I show that my application was filed for a benefit entitlement for December 1965 and pursuant to Section 202(a)(3) I am "entitled to an old-age insurance benefit for each month, beginning with the first month after August 1950 in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies. "

Pursuant to Section 203(a)(b)(f), my insurance under the plan of an active individual who gives substantial services in self employment, ever has an entitlement of a benefit for each and every month exclusive of the month in which I die.

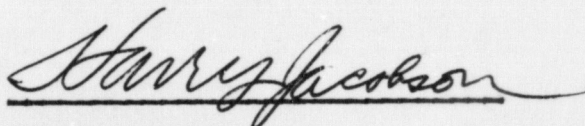
The appellee's failure to provide me with this plan of insurance caused damages such as reductions and omissions.

WHEREFORE, I respectfully request the Court to reverse the Summary Judgment, grant me money damages due 1965 to present, grant me extra money damages, costs and interest from 1965.

Sworn to before me
this day of 14th of
January, 1976.



HERBERT D. ROSEN
Notary Public, State of New York
No. 24-8644600
Qualified in Kings County
Commission Expires March 30, 1976



HARRY JACOBSON
Appellant